

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.23 OF 2023**

**DISTRICT : NAVI MUMBAI**

Shri Gangaram Munnala Shakti, )  
R/at C/o. K.M. Shakti, Room No.4/1, MSEB Colony, )  
Building No.3/37, Vashi, Sector 15, Navi Mumbai )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Public Health Department, GT Hospital Complex,) )  
Mumbai )
2. The Commissioner, )  
Employees State Insurance Scheme, )  
Panchdeep Bhavan, 6<sup>th</sup> Floor, N.M. Joshi Marg, )  
Lower Parel, Mumbai 400013 )
3. The Administrative Officer (Medical), )  
ESIS, 3<sup>rd</sup> Floor, ESIS Hospital, Ganpatrao Marg, )  
Worli, Mumbai 400018 )..Respondents

Shri Vishal Hegde – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 31<sup>st</sup> July, 2023

PRONOUNCED ON: 9<sup>th</sup> August, 2023

**J U D G M E N T**

1. Heard Shri Vishal Hegde, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant was working as a Sweeper in Employees State Insurance Scheme (ESIS) from 10.4.1973 to 30.4.2010. The applicant retired on 30.4.2010 on attaining the age of superannuation. He challenges the order dated 25.7.2022 passed by respondent no.1 wherein the department has refused to pay interest on salary and allowances and on retirement benefits despite several representations.

3. Ld. Advocate for the applicant submits that the applicant was suspended on two occasions. As an offence came to be registered under Section 302 of IPC and he was placed under suspension on 20.12.1980 for the first time. The applicant came to be convicted by the Sessions Judge, Thane vide order dated 24.11.1981 in Criminal Case No.146/1981. The applicant preferred Criminal Appeal No.1081 of 1981 before the Hon'ble High Court and he was acquitted by order dated 7.6.1996, which has not been challenged by the respondents. The applicant was reinstated vide order dated 18.1.2000. The suspension period from 20.12.1980 to 18.1.2000 was regularized and treated as duty period by order dated 28.4.2011.

4. Ld. Advocate for the applicant submits that subsequently a criminal case was registered against the applicant and he was suspended by order dated 9.11.2006 w.e.f. 8.4.2006 as he was arrested on that date. The applicant retired on 30.4.2010. He was acquitted by order dated 3.4.2010 passed by the Additional Sessions Judge, Kalyan. By order dated

5.3.2013 passed by respondent no.2 the suspension period of the applicant from 8.4.2006 to 30.4.2010 was regularized and treated as duty period. By order dated 7.1.2017 the applicant was granted payment for the regularized period.

5. Ld. Advocate for the applicant submits that after several representations the applicant was paid arrears of salary for the suspension period from 1980 to 2000 on 7.12.2012. However, interest on delayed payment was not paid. Therefore, the applicant filed OA No.341 of 2015 in this Tribunal inter alia seeking interest on delayed payment, pension and arrears. This Tribunal by its order dated 20.4.2016 disposed the said OA with directions to the applicant to make representations to the respondents.

6. Ld. Advocate submits that the applicant inter alia made representations dated 1.8.2017, 1.3.2021, 16.3.2021, 29.5.2021, 27.7.2021 & 16.2.2022. Ld. Advocate for the applicant refers to letter dated 4.6.2018 from Medical Administrative Officer, ESIS to Commissioner, ESIS stating that applicant is entitled to interest on the arrears paid to the applicant and the delay in giving pension to the applicant has been caused because of administrative reasons. He further refers to letter dated 1.2.2019 addressed to Principal Secretary, Public Health Department from Director, ESIS seeking approval for grant of interest to the applicant stating that applicant is entitled to interest of Rs.11,40,894/- for delay in payment of retiral benefits. Another letter dated 11.7.2019 was sent by Director, ESIS to Principal Secretary, Public Health Department. The Public Health Department raised certain queries from Commissioner, ESIS regarding the proposal of granting interest on delayed payment by letter dated 14.2.2022. A proposal was sent again to respondent no.1 stating that applicant decision has been taken in the criminal case and he should be given interest on delayed payment.

Applicant subsequently filed OA No.632 of 2022 which was allowed to be withdrawn by order dated 13.12.2022 with liberty to avail legal remedy on the basis of communication dated 25.7.2022.

7. Ld. Advocate submits that in the impugned order dated 25.7.2022 the respondent no.1 has relied on the **judgment and order dated 28.10.1996 of the Hon'ble Supreme Court in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board** and the **judgment and order dated 3.11.2003 of the Hon'ble Supreme Court in Union of India Vs. Jaipal Singh**. Ld. Advocate for the applicant submits that the ratio in *Ranchhodji Chaturji Thakore* (supra) relates to the issue of back wages and not interest on arrears.

8. Ld. Advocate for the applicant relied on the **judgment and order dated 9.7.2021 passed by the Aurangabad Bench of this Tribunal in OA No.71 of 2020 Bharatsing Vitthalsing Patil Vs. The State of Maharashtra & Anr. and submits that the facts are similar.**

9. Ld. Advocate for the applicant produced a chart of payment received and due and drawn statement. The same is taken on record and marked Court Exhibit 'A' for identification.

10. Ld. PO is directed to check and verify the chart produced by the Ld. Advocate for the applicant. Ld. PO submits that the chart produced by the Ld. Advocate for the applicant is correct.

11. Ld. PO relied on the affidavit dated 22.11.2022 filed by Mahesh Ashokrao Varudkar, Director (Administration), ESIS, Mumbai wherein in para 5 it is stated that the applicant was under suspension on two occasions under charge with Section 302 of IPC during the period 21.12.1980 to 17.1.2000 and 8.4.2006 to 30.4.2010. It was mentioned in

the suspension order that subsistence allowance shall be subject to the applicant submitting certificate every month that he has not accepted any private employment or engaged himself in trade or business as prescribed under Section 151 of BCSR and Rule 69(4) of MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. Considering this Ld. PO stated that applicant himself was responsible for not getting the subsistence allowance on the said two occasions. Therefore the applicant is not entitled for interest on delayed payments.

12. Ld. PO relied on the judgment of the Hon'ble Supreme Court in **Naresh Kumar Vs. Department of Atomic Energy & Ors. Civil Appeal No.3138 of 2008 decided on 8.7.2010** wherein it is observed in para 9 as under:

*“9. .... Merely because the case of the appellant was forwarded by the Department vide its letter dated 27th January, 2007 for favourable consideration, would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation after representation which are consistently rejected then the appellant cannot claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the Writ Petition even on the ground of unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for reasons best known to the appellant he did not challenge the same before the Court of competent jurisdiction.*

13. Ld. PO has given a detailed chart stating the dates on which pensionary dues are paid and the reasons for delay.

14. I have considered the facts. In this case it is to be noted that this is the third round of litigation. The applicant was suspended on two occasions during the period 21.12.1980 to 17.1.2000 and 8.4.2006 to 30.4.2010. He has not submitted the certificate every month that he has not accepted any private employment or engaged himself in trade or business. I have perused the impugned order dated 25.7.2022 passed by respondent no.1 wherein it is clearly stated that as per the decision of the Hon'ble Supreme Court in **Ranchhodji Chaturji Thakore** (supra) the applicant is not entitled for the interest on delayed payment. In the said judgment in para 3 it is observed as under:

*“The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant, Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference.”*

15. I refer to and rely on the judgment of the Hon'ble Supreme Court in Union of India & Ors. Vs. Jaipal Singh, Appeal (Civil) No.8565 of 2003 decided on 3.11.2003 wherein it is observed that, the appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent.

16. In view of the above, I hold that the applicant is not entitled for the relief claimed in this OA. Hence, Original Application is dismissed with no orders as to cost.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**9.8.2023**

Dictation taken by: S.G. Jawalkar.

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